

City of Seattle Hearing Examiner

LAND USE/SEPA DECISION APPEAL FORM

It is not required that this form be used to file an appeal. However, whether you use the form or not, please make sure that your appeal includes all the information/responses requested in this form. An appeal, along with any required filing fee, must be received by the Office of Hearing Examiner, not later than 5:00 p.m. on the last day of the appeal period or it cannot be considered. Delivery of appeals filed by any form of USPS mail service may be delayed by several days. Allow extra time if mailing an appeal

This appeal is filed on a form similar to the Hearing Examiner's with Attachments

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant: If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

David E. Sherrard, 7300 Woodlawn Avenue NE, Apt. 205 Seattle, WA 98115

In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: ☐ **U.S. Mail** ☐ **Fax** ☒ **Email Attachment**

2. Authorized Representative: Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name David E. Sherrard

Address 7300 Woodlawn Ave NE, Apt 205, Seattle, WA 98115

Phone: Home: 206-450-2606 Fax: none

Email Address: desherrard@yahoo.com

In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: ☐ **U.S. Mail** ☐ **Fax** ☒ **Email Attachment**

DECISION BEING APPEALED

1. Decision appealed (Indicate MUP #, Interpretation #, etc.): Master Use Permit: Design Review Approval; Public Notice: January 19, 2021 Area: NORTHEAST; Address: 420 NE 72ND ST; Project: 3033823-LU; Zone: NC2P-75 (M1)

2. Property address of decision being appealed: 7201 5th Ave. NE (parcel no.9528101571 / 6,220 sf); 430 NE 72nd Street (parcel no. 9528101580 / 6,000 sf); 428 NE 72nd Street (parcel no. 9528101510 /

4,000 sf); 424 NE 72nd Street (parcel no. 9528101511 / 4,000 sf); 420 NE 72nd Street (parcel no. 9528101515 / 4,000 sf).

3. Elements of decision being appealed. Check one or more as appropriate:

- ☒ Adequacy of analysis to support Determination of Non-Significance or exemption
☒ Adequacy of conditions ☐ Variance
☒ Design Review and Departure ☐ Adequacy of EIS
☐ Conditional Use ☐ Interpretation (See SMC 23.88.020)
☒ EIS not required ☐ Short Plat
☐ Major Institution Master Plan ☐ Rezone
☐ Other (specify: _____)

4. What is your interest in this decision? (State how you are affected by it)

I live and own property in the vicinity of the project and would be affected daily by the increased intensity, height and visual prominence of the project, adverse impacts on neighborhood character from lack of meaningful transition, transportation impacts, impacts on on-street parking and affects on the daily lives of residents and their guests, adverse impacts to commercial uses would be adversely affected by the lack of adequate convenient parking which would affect the business and neighborhood viability and character which residents rely upon as an essential amenity, parking over-utilization would reduce parking available for recreational use of Green Lake which would result in recreation parking further encroaching on neighborhoods with adverse impacts on residents, businesses and the general public

5. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

1. The public notices do not provide adequate public access to the project file, including the, application plans, decision, and other additional information related to the project, such that the public can reasonably access materials and therefore interested parties are prevented from presenting their view because of the failure to adequately disclose the details of the proposal and deprived the public and the decision maker of the opportunity to reach an "informed" decision.
2. The Early Design Guidance meeting on October 30, 2017 was performed for a proposal not meeting current zoning standards in violation of RCW 36.70B.070, SMC 23.76.010, SMC 23.76.026.C.2 and SDCI Early Design Guidance Proposal Packet Checklist Worksheet. In addition, the alleged rezone application was not complete at the time of the Early Design Guidance Meeting.
3. Notice for the Early Design Guidance process was not performed in accordance with requirements of SMC 23.76.010.

4. An additional Early Design Guidance process for the revised 75 foot proposal was not scheduled in accordance with SMC 23.41.014.B.2 and SMC 23.41.014.C. Outreach documentation was submitted in April 2019 but was not considered at an Early Design Guidance Meeting as required by codes and guidelines.
5. The lack of an additional Early Design Meeting for the 75 foot proposal deprived the public within 200 feet of the proposal of Public Notice in accordance with requirements of SMC 23.76.010.
6. Notice of the Design Review Application was not posted in the form of a large sign as required by SMC 23.76.010 depriving members of the general public the opportunity to comment or establish a record of comment allowing appeal.
7. Public comments were not provided to the Design Review Committee in a timely manner nor fully and accurately therefore depriving them of the means to meet the mandate of SMC 23.41.008.A.1, SMC 23.41.014.C.2, SMC 23.41.014.D.1 and 23.41.014.F.1. to consider public comments.
8. The Director did not provide the Design Review Committee the Director's review of the project's design and consistency with the guideline priorities, and recommendation required by SMC 23.41.014.F.1 and therefore deprived the Design Review Board of critical information needed to perform substantive review pursuant to SMC 23.41.014 in the limited time available to the Board.
9. The Design Review Board (DRB) did not fulfill its obligation in SMC 23.41.008A.2. to "Determine whether a proposed design submitted by an applicant does or does not comply with the guideline priorities."
10. The Director's design review decision on page 26 misreferences, misapplies, and misconstrues the requirements of Section 23.41.014.F and G of the Seattle Municipal Code describing the content of the SDCI Director's decision; misrepresents and misconstrues the requirements of SMC 23.41.008.F..2 and 3; and misrepresents and misconstrues the recommendation of the Design Review Board.
11. In the decision, the Director makes no specific factual findings and conclusions and did not address in his decision the mandate of compliance with the specific design guidelines cited in the decision and to achieve the purpose and intent of this Chapter 23.41 specifically in regard to Greenlake Neighborhood Design Guidelines and Seattle Design Guidelines. The decision merely listed applicable guideline headings. In the absence of a specific findings of fact and conclusions, the Director's decision cannot be given substantial weight.
12. The Director did not address specific requirements of the Property Use and Development Agreement (PUDA) for the site providing in Section 2.j that on-site parking be adequate to meet all project-generated demand. No amendment or rescission of the PUDA has been approved pursuant to 23.76.060.C. The analysis of parking demand does not establish adequate parking for the range of uses that may be developed on the site.

13. The original Notice of Application specified a State Environmental Policy Act (SEPA) review was required. Page 2 of the decision states that "...as a result of subsequent amendments to the City's SEPA Ordinance the proposed development is exempt from SEPA review." No citation is provided, however this presumably is based on "Table A for SMC 25.05.800 Exemptions for Residential Use" that establishes an exemption level of 200 for urban villages that have not exceeded plan estimates and 20 for those who have. There is no documentation that this criteria is met at the date of the decision.

14. i.

15. The finding that the proposal is exempt from SEPA review is not in compliance with SMC 25.05.800.A.2.i that provides that said regulations shall " assure that development does not exceed growth estimates without SEPA review." Furthermore, Director's Rule 16-2019 provides that "SDCI will not apply a higher exemption level if new projects will cause growth estimates to be exceeded." The subject proposal includes 155 dwelling units and therefore this new project will cause growth estimates to be exceeded, therefore it is not exempt from SEPA review and a Threshold Determination is required pursuant to SMC 25.05.310.

6. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

Alternative A

1. Remand to meet required public notice and required notice, including
 - a. Require public notice for additional Early Design Review Guidance and subsequent meetings of the Design Review Board(DRB) to consider the Master Use Permit, in accordance with SMC 23.76.010 to allow the public the opportunity to take an informed part therein.
 - b. Require the Director to submit complete and accurate public comments to the DRB in accordance with SMC 23.41.008.A.1, SMC 23.41.014.C.2, SMC SMC 23.41.014.D.1 and 23.41.014.F.1. to allow the DRB to meet their mandate to consider public comment.
 - c. Required the Director to provide the DRB the Director's review of the project's design and consistency with the guideline priorities, and recommendation pursuant to SMC 23.41.014.F.1
 - d. Require the DRB to adopt specific finding and conclusions to meet the mandate in SMC 23.41.008A.2. to "Determine whether a proposed design submitted by an applicant does or does not comply with the guideline priorities."
2. Require the Director to issue a new decision, after additional Early Design Review Guidance and subsequent meetings of the DRB that provides factual findings and conclusions regarding compliance with specific design guidelines and the intent of the guidelines.

Alternative B

In the alternative: make specific findings that the proposal does not meet the specific applicable Design Review Guidelines, and condition the project to make specific design changes to meet said guidelines.

Signature 

Date February 1, 2021

Deliver or mail appeal and appeal fee to:

MAILING ADDRESS: City of Seattle
Office of Hearing Examiner
P.O. Box 94729
Seattle, WA 98124-4729

PHYSICAL ADDRESS:	SEATTLE MUNICIPAL TOWER 700 5th Avenue, Suite 4000 40th Floor Seattle, WA 98104
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Note: Appeal fees may also be paid by credit or debit card over the phone (Visa or MasterCard only).

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